



POLICE DEPARTMENT

February 11, 2008

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Detective Jose Santiago
Tax Registry No. 914946
Transit District No. 12
Disciplinary Case No. 82437/06

Detective Volny JeanJacques
Tax Registry No. 901729
Police Service Area No. 6
Disciplinary Case No. 82431/06

Lieutenant Ahmad Alli
Tax Registry No. 914661
78 Precinct
Disciplinary Case No. 82432/06

The above-named members of the Department appeared before me on October 30 and October 31, 2007, charged with the following:

Disciplinary Case No. 82437/06

1. Said Detective Jose Santiago, while assigned to IAB Group 52, while on duty, on or about and between March 1, 2006 and March 8, 2006, engaged in conduct prejudicial to the good order, efficiency, and discipline of the Department in that, while acting in concert with two other members of the service, identities know to the Department, did tamper with evidence, in that a copy of a videotape of an integrity test was altered to remove the inappropriate language of a member of service, identity known to the Department, which was recorded on the videotape. (*As amended*)

P.G. 203-10, Page 1 Paragraph 5 – PROHIBITED CONDUCT

Disciplinary Case No. 82431/06

1. Said Detective Volny JeanJacques, while assigned to IAB Group 52, while on duty, on or about and between March 1, 2006 and March 8, 2006, engaged in conduct

prejudicial to the good order, efficiency, and discipline of the Department in that, while acting in concert with two other members of the service, identities know to the Department, did tamper with evidence, in that a copy of a videotape of an integrity test that was conducted by said Detective and his team was altered to remove the inappropriate language of a team member which was recorded on the videotape. (*As amended*)

P.G. 203-10, Page 1 Paragraph 5 – PROHIBITED CONDUCT

Disciplinary Case No. 82432/06

1. Said Lieutenant Ahmad Alli, while assigned to IAB Group 52, while on duty, on or about and between March 1, 2006 and March 8, 2006, engaged in conduct prejudicial to the good order, efficiency, and discipline of the Department in that, while acting in concert with two other members of the service, identities know to the Department, did tamper with evidence, in that a copy of a videotape of an integrity test was altered to remove the inappropriate language of a member of service, identity known to the Department, which was recorded on the videotape. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

2. Said Lieutenant Ahmad Alli, while assigned to IAB Group 52, while on duty, on or about and between March 1, 2006 and March 16, 2006 engaged in conduct prejudicial to the good order, efficiency, and discipline of the Department in that said Lieutenant did intentionally withhold the original videotape of an integrity test from his Commanding Officer and presented him with an altered version for the purpose of preventing his Commanding Officer from discovering that a team member used inappropriate language. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

3. Said Lieutenant Ahmad Alli, assigned to IAB Group 52, while on duty, on or about July 13, 2006, having become aware of an allegation of corruption or serious misconduct involving members of the service, did fail and neglect to notify his Commanding Officer and/or the Internal Affairs Bureau Command Center, as required.

P.G. 207-21, Pages 1-2 – ALLEGATIONS OF CORRUPTION AND SERIOUS MISCONDUCT AGAINST MOS

4. Said Lieutenant Ahmad Alli, assigned to IAB Group 52, while on duty, on or about July 13, 2006, did wrongfully and without just cause fail to supervise other members of the service under his supervision.

P.G. 202-17, Page 1, Paragraph 1 – PATROL SUPERVISOR DUTIES AND RESPONSIBILITIES (*As amended*)

The Department was represented by Mark Berger, Esq., Department Advocate's Office. Respondent Santiago and Respondent JeanJacques were represented by John Patten, Esq. Respondent Alli was represented by James Moschella, Esq.

The Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 82437/06

Respondent Santiago is found Guilty as charged.

Disciplinary Case No. 82431/06

Respondent JeanJacques is found Guilty as charged.

Disciplinary Case No. 82432/06

Respondent Alli is found Guilty of Specification Nos. 1 and 2. He is found Not Guilty of Specification Nos. 3 and 4.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Detective Christo Cristanikos, Detective Louis Molina, Sergeant David Tavaréz, and Lieutenant John McGovern as witnesses.

Detective Christo Cristanikos

Cristanikos, a 17-year member of the Department, is currently assigned to the Internal Affairs Bureau (IAB) Group 25. In 2006, he was working in IAB's Special Investigations Unit, where he investigated allegations of misconduct involving other members of IAB. In March of that year, the Commanding Officer of IAB Group 52, Deputy Inspector O'Brien, reported to the Special Investigations Unit that an integrity test videotape had been altered in order to remove a Police Officer Hugo Hernandez's inappropriate language. O'Brien also submitted a copy of the videotape. Although this version of the tape did not contain any profanity, Hernandez conceded to Cristanikos in an interview that he did, in fact, use profanity as he was setting up the camera for the integrity test. In a subsequent interview, Respondent JeanJacques explained to Cristanikos that when the field team returned to the command and played the tape of the integrity test, there was audible cursing on the tape. At that point, according to Respondent JeanJacques, Respondent Alli stated that O'Brien did not need to hear the cursing and asked him (Respondent JeanJacques) if the tape could be fixed. When JeanJacques replied that the tape could be fixed, Alli gave the tape to him. A few days later, Respondent JeanJacques brought the tape to Respondent Santiago. Respondent JeanJacques asked Respondent Santiago to remove the profanity from the tape so that O'Brien would not have to hear it. Respondent Santiago proceeded to duplicate the tape and edit this duplicate copy so that the profanity was removed. Respondent JeanJacques returned the original, unaltered version of the tape to Respondent Alli.

In an April 19, 2006 Official Department Interview, Respondent Alli explained to Cristanikos that he wanted the tape to be edited because he did not want O'Brien to give

Hernandez a Command Discipline for cursing. Respondent Alli told Cristanikos that he held on to the original tape and gave the altered copy of the tape to a Detective Louis Molina for review. Respondent Alli turned over the original tape at the April 19 interview.

On cross-examination, Cristanikos testified that the log for this investigation was generated on March 16, 2006. During the investigation, Cristanikos had the opportunity to watch both versions of the tape. He explained that just after the heading on the original tape, Hernandez can be heard cursing because he cannot get the camera to focus properly. After approximately a minute, Hernandez realizes that he is recording himself setting up the camera and turns the camera off. Cristanikos explained that the noise inside the "tech vehicle" was not even supposed to be taped because the recording equipment is supposed to catch only the audio taking place outside, specifically the conversation between the undercover member of the service conducting the integrity test and the test's target. Hernandez's cursing heard on the tape took place before the actual integrity test commenced. Cristanikos, who reviewed Group 52's Minor Violation Log as part of his investigation, testified that there was no indication of any member of the group ever receiving a minor violation for using inappropriate language on a video or audiotape.

Cristanikos testified that the actual test is the same on both the original and duplicate copies. The only difference between the two versions is that on the original version Hernandez can be heard cursing in frustration before the test. The footage of the actual test was not altered in any way, and Cristanikos stated that there was never an intention on the part of the Respondents to do so. Respondent JeanJacques stated in his

Official Department Interview that Respondent Alli had indicated to the group that the original tape would be used as a training video.

[Department's Exhibit (DX) 1 is a copy of the original version of the integrity test videotape. After being headed at 4:17 p.m., the tape jumps to 6:01 p.m., which is when Hernandez's profanity can be heard. The tape then jumps again, this time to 6:12 p.m., which is when the undercover conducting the test initially engages the test target. DX 2 is a copy of the altered version of the integrity test videotape. In this version, the tape jumps directly from the 4:17 p.m. heading to the engagement of the test target at 6:12 p.m.]

Detective Louis Molina

Molina, an eight-year member of the Department, is currently assigned to IAB Group 12. On March 1, 2006, he was assigned to IAB Group 52. He testified that he was the undercover officer that day in an integrity test that targeted a police officer assigned to Public Service Area 4. The officer passed the test. When the field team returned to the command, they reviewed the video recording of the test. The team realized that after the tape's heading, Hernandez could be heard using profanity. Molina explained that a tape's heading is a display of the time, the command, the test being performed, and the numbers of the undercover officer conducting the test. According to Molina, once a videotape heading starts, the integrity test has begun. As the field team watched the tape that day, everybody laughed at Hernandez's language, and Respondent Alli mentioned something about "dealing with it." Three days later, the group viewed the tape for a second time. This time, Respondent Alli said something about "get[ting] it

fixed," and handed the tape to Respondent JeanJacques. Molina did not know at the time what Respondent Alli or Respondent JeanJacques was going to do with the tape.

Approximately a week later, however, Molina was given the altered, duplicate copy of the tape. On this copy, Hernandez's profanity had been removed. The altered copy did not differ from the original copy in any other way. Molina testified that he did not think there was anything wrong with the altering of the tape. He explained that he was new to Group 52 at the time, and he believed it was common practice. In the middle of March, however, Respondent JeanJacques was the subject of an Official Department Interview, and there was discussion among the members of Group 52 about an investigation into the alteration.

On cross-examination, Molina testified that the footage of his interaction with the test target on the altered tape and the original tape were identical. He stated that between 4:17 p.m. (the time that the tape was headed) and 6:01 p.m. (the time of Hernandez's profanity), the field team was not recording anything but was looking for the test target. Molina explained that a tape is headed before the test target is found because a field team does not know exactly when it will encounter the target and the tape must be ready to record a test at any moment. On the March 1, 2006 test, Molina did not encounter the test target until 6:12 p.m. That is when Molina started to engage the test target in the actual integrity test. The test was the first time that Hernandez was responsible for using the video-recording equipment, and he did not know how to use the equipment properly. Molina explained that Hernandez was not supposed to record anything between the heading of the tape and the moment that he (Molina) engaged the test target. Hernandez mistakenly believed at 6:01 p.m. that the test was about to begin. In addition, a blocking

device was supposed to prevent noise inside the tech vehicle from making it onto the videotape. Molina testified that during his eight months with Group 52, the performance of the group members was continually reviewed. Molina did not, however, ever review training videos during that period.

Sergeant David Tavaréz

Tavaréz, a 16-year member of the Department, is currently assigned to IAB's Special Investigations Unit. At the direction of his supervisor (Lieutenant John McGovern), Tavaréz interviewed Respondent Alli on July 18, 2006. In the interview, Respondent Alli made an allegation of misconduct against two members of IAB Group 52, a Sergeant Harper and a Detective Haro. Respondent Alli alleged that approximately a week earlier he overheard Harper and Haro as they discussed deleting a recording of an integrity test that they had previously conducted. The test was recorded on a hawk recording device (an audio recording device used by undercover members of the service to record their conversations), and Respondent Alli alleged that he heard Harper and Haro talk about getting somebody in the Technical Assistance Response Unit to delete it. Respondent Alli told Tavaréz that other than what he overheard, he had no evidence to support his allegation.

On cross-examination, Tavaréz testified that his interview with Respondent Alli took place over the telephone. Upon review of his interview worksheets, Tavaréz stated that he believed the integrity test that was being discussed by Harper and Haro had occurred on July 7, 2006. Respondent Alli overheard their conversation at some point after that day, but Tavaréz did not know exactly when. Respondent Alli explained to

Tavarez in the interview that he was able to pinpoint that particular integrity test only after making some inquiries. Respondent Alli told Tavarez that he did not know what was on the recording that Harper and Haro wanted to delete. Respondent Alli speculated, however, that the integrity test recording somehow picked up a romantic conversation between Harper and Haro.

Lieutenant John McGovern

McGovern, a 22-year member of the Department, is currently assigned as Commanding Officer of IAB Group 51. In July 2006, he was assigned to IAB Group 1. He testified that at some point that month, Respondent Alli contacted him with an allegation that Harper and Haro were involved in misconduct concerning the alteration of an integrity test audio recording. McGovern instructed Tavarez to interview Respondent Alli about the situation. A subsequent investigation resulted in a substantiation of the alleged misconduct, and Department charges were brought against Harper and Haro for attempting to alter an audiotape used in an integrity test. Harper and Haro ultimately pleaded guilty. McGovern stated that without Respondent Alli's assistance, his unit would have never found out about Harper and Haro's misconduct.

The Respondents' Case

The Respondents called Detective Luis Malespin as a witness and testified in their own behalf.

Detective Luis Malespin

Malespin is currently assigned as the technical officer in IAB Group 52. He explained that the technical officer is responsible for maintenance and distribution of recording equipment, specifically cameras and beeper kels. He further explained that an undercover officer conducting an integrity test wears a beeper kel to record the audio of the encounter with the test target. The beeper then transmits the audio to a kel box attached to the video camera. An audio plug is used to ensure that only the audio from the kel (and not the noise inside the tech vehicle) is recorded on the videotape.

Malespin testified that when Hernandez returned to the command on March 1, 2006, he (Hernandez) admitted to mistakenly recorded audio from inside the tech vehicle. Malespin, who later reviewed the videotape, stated that Hernandez could be heard on the tape expressing anger that a vehicle was blocking his view. There were no civilians inside the tech vehicle, and Hernandez's language was not directed at any specific individual. The next workday, Respondent Alli instructed the team to be careful with their use of profane language just in case they were accidentally being recorded.

On cross-examination, Malespin testified that he was not present when Respondent Alli gave the videotape of the integrity test to Respondent JeanJacques.

Respondent Detective Jose Santiago

Respondent Santiago, a 13-year member of the Department, is currently assigned to Transit District No. 12. Before his transfer to transit, he worked in IAB for six years. [Respondent Exhibit (RX) A is a summary of Respondent Santiago's various assignments and accomplishments as a member of the Department. RX B consists of copies of

Respondent Santiago's resume and annual performance evaluations from 1998, 2004, 2005, and 2006.]

Respondent Santiago testified that during his last two years in IAB, he was responsible for maintaining his group's technical equipment. Respondent Santiago stated that in early March 2006, Respondent JeanJacques brought the March 1 integrity test videotape to him and asked him to remove inappropriate language from the tape. Respondent Santiago reviewed the tape and saw that the inappropriate language took place before the actual integrity test commenced. Respondent Santiago proceeded to copy the tape and remove the inappropriate language from the duplicate version. He did not erase any part of the original tape. Respondent Santiago gave both the original and duplicate copies of the tape to Respondent JeanJacques.

On cross-examination, Respondent Santiago testified that when Respondent JeanJacques brought the tape to him, Respondent JeanJacques said something about O'Brien not having to hear the inappropriate language. Respondent Santiago stated that he agreed with Respondent JeanJacques, and he did not believe that there was anything wrong with preventing O'Brien from seeing the total content of the tape. According to Respondent Santiago, Respondent JeanJacques did not mention Respondent Alli at the time or say anything about the tape being used for training purposes. It took Respondent Santiago approximately 15 minutes to alter the tape. When he gave the tapes to Respondent JeanJacques, it was his understanding that O'Brien would not see the original tape.

Respondent Detective Volny JeanJacques

Respondent JeanJacques, a 15-and-a-half-year member of the Department, is currently assigned to Police Service Area No. 6. Before his transfer to housing, he worked in IAB for over five years. [RX C is a copy of a memorandum, written by the Commanding Officer of IAB Group 52 for the Chief of IAB on October 25, 2005. In the memorandum, it is recommended that Respondent JeanJacques be promoted from detective-third-grade to detective-second-grade. In addition, the memorandum serves as a summary of Respondent JeanJacques' various assignments and accomplishments as a member of the Department. RX D consists of copies of Respondent JeanJacques' annual performance evaluations from the years 2001 through 2006.]

Respondent JeanJacques testified that when a test target passes an integrity test, the videotape of the test is reviewed and then stored in a box. He further testified that Respondent Alli also used many tapes of integrity tests as training films. Respondent JeanJacques was the undercover in the March 1, 2006 integrity test. Upon returning to the command that day, the field team reviewed the videotape of the test. At the very beginning of the tape, the team was able to hear Hernandez cursing in frustration because he could not get a good camera angle. The cursing was not directed at anyone in particular. Respondent JeanJacques explained that it was Hernandez's first time filming a test, and he (Hernandez) must have accidentally forgotten to use the plug that prevents the recording equipment from capturing noise inside the tech vehicle. While watching the video, Respondent Alli asked if the cursing could be removed from the tape. Respondent JeanJacques informed Respondent Alli that the tape could be altered so long

as the footage of the actual integrity test was not affected. Respondent Alli gave the tape to Respondent JeanJacques, who in turn brought the tape to Respondent Santiago.

Respondent JeanJacques informed Respondent Santiago that there was inappropriate language on the tape that needed to be deleted. Respondent Santiago produced an edited, duplicate copy of the tape. Respondent JeanJacques then gave the original tape to Respondent Alli and the duplicate copy to Molina. According to Respondent JeanJacques, Respondent Alli had told him that the original tape would be used for training purposes and be shown to O'Brien at a later date when O'Brien was in a better mood. Respondent JeanJacques testified that he even wrote the word "training" on the original tape before returning it to Respondent Alli. Respondent JeanJacques stated that it was his understanding that O'Brien would at some point see the original tape, and he did not intend to deprive O'Brien the opportunity of viewing it. Respondent JeanJacques further stated that he had no idea that there was anything wrong with what he did since the footage of the actual integrity test was not affected. He explained that all he was trying to do was make the video recording more presentable.

On cross-examination, Respondent JeanJacques testified that Respondent Alli gave him the tape immediately after viewing it on March 1, 2006. Respondent Alli did not need to coerce Respondent JeanJacques into taking the tape. When Respondent JeanJacques gave the videotape to Respondent Santiago, he did not tell Respondent Santiago that the original, unaltered tape would be used for training purposes. All he told Respondent Santiago was that the tape needed to be altered so that O'Brien would not hear the profanity. Respondent JeanJacques testified that O'Brien did not like bad language on integrity test videotapes.

On redirect examination, Respondent JeanJacques testified that he brought the tape to Respondent Santiago because Respondent Santiago knows how to use the recording equipment to make edits. Respondent JeanJacques stated that he never asked Respondent Santiago to alter the integrity test portion of the recording, and he did not see any harm in erasing Hernandez's cursing.

Respondent Lieutenant Ahmad Alli

Respondent Alli, a 12-year member of the Department, is currently assigned to the 78 Precinct. He was transferred out of IAB in August 2006 as a result of the current case. At the time of his transfer, he had spent more than a year working in Group 52. He had also served an earlier stint in IAB as a sergeant.

Respondent Alli testified that he was the leader of the Group 52 field team that conducted integrity tests on March 1, 2006. The test target that day passed the test, and the team returned to the command and reviewed the test videotape. The team laughed when Hernandez was heard cursing on the tape. Respondent Alli explained that Hernandez was not cursing at anyone in particular but was merely cursing out of frustration because he could not get a good camera angle. Hernandez did not realize at the time that he was being recorded. Respondent Alli explained that the noise inside the tech vehicle is not supposed to be captured on an integrity test recording. Moreover, it must have been a mistake on Hernandez's part to start recording in the first place since field teams do not normally record themselves as they position their cameras. According to Respondent Alli, he has never been instructed that the setting up of the camera needs

to be recorded for evidentiary purpose. March 1, 2006 was that first time that Hernandez recorded an integrity test.

Respondent Alli testified that during his time in Group 52, there were other incidents of group members cursing on integrity test recordings. As far as he knew, O'Brien never disciplined anybody for cursing on tape. Respondent Alli stated, however, that when he heard the profanity on the tape, he wondered how O'Brien would react. At the time, he said something to the effect of, "[W]e will deal with this when we get back [from the weekend]." When the team returned from the weekend, they watched the videotape again. At that point, Respondent Alli gave the tape to Respondent JeanJacques. Respondent Alli asked Respondent JeanJacques to make a copy of the tape and then return the original to him for training purposes. Respondent Alli explained that his decision to make a duplicate copy of the tape was based on, among other things, the fact that the test target passed the test, the test was merely procedural and not criminal in nature, Hernandez's profanity was not directed at anyone, and Hernandez's mistake was minor. According to Respondent Alli, when he gave the tape to Respondent JeanJacques, it was not his intention to have the integrity test portion of the tape altered in any way. Upon review of both the original and duplicate copies, Respondent Alli confirmed that the integrity test portion did, in fact, remain unaltered. Respondent Alli testified that in addition to the video recording of the integrity test, there was also a separate audio recording of the test. Respondent Alli did not have this audio recording copied or altered in any way.

Respondent Alli testified that he gave the altered version of the tape to Molina so that Molina (as the assigned investigator for the test) could prepare his necessary

paperwork. Respondent Alli explained that when a test subject passes an integrity test, the assigned investigator prepares a closing report on the test and then passes the case folder onto a sergeant, who in turn prepares a second closing report and passes the folder onto a lieutenant. When Respondent Alli was assigned to Group 52, it was his responsibility to review each case folder in its entirety and then pass it onto O'Brien. According to Respondent Alli, it was his intention to give both the original and altered versions of the tape to O'Brien when the time came to give O'Brien the case folder for the March 1, 2006 integrity test. Respondent Alli explained that it typically took three or four months for a case folder to reach that point. On March 16, 2006, however, O'Brien asked to see all of the case folders for the month. Because the case folder for the March 1, 2006 test had not yet reached Respondent Alli, Respondent Alli had not yet had the opportunity to put the original videotape into the case folder. In late March or early April, Respondent Alli learned that there was an investigation into the alteration of the tape. He brought the tape with him to his Official Department Interview on April 19, 2006.

In July 2006, Respondent Alli was still assigned to IAB Group 52. He explained that on or about July 13, 2006, he overheard "bits and snippets" of a conversation between Harper and Haro, two members of the service not under his immediate supervision. From their conversation, Respondent Alli got the impression that Harper and Haro were planning to alter a tape. Respondent Alli was approximately ten or 15 feet away from Harper and Haro at the time. There was a rumor in the office that Harper and Haro were involved romantically, and Respondent Alli believed at first that they were talking about a personal video. In the course of doing paperwork on July 16, 2006,

however, Respondent Alli learned that Harper and Haro had conducted an integrity test together. Respondent Alli explained that he was surprised because Harper and Haro had administrative assignments and did not usually conduct tests. On July 17 or July 18, after speaking with a supervisor with whom Harper and Haro conducted the test, Respondent Alli realized that the tape to which he overheard Harper and Haro refer might have been an integrity test recording. On July 18, 2006, Respondent Alli notified O'Brien (his Commanding Officer) about the situation. That same day, O'Brien notified IAB Group 1 of Respondent Alli's allegation, and Tavaréz interviewed Respondent Alli about the allegation.

On cross-examination, Respondent Alli testified that the separate, unaltered audio recording of the March 1, 2006 integrity test contained only the actual test, not Hernandez's profanity. In his April 2006 Official Department Interview, Respondent Alli stated that he wanted the videotape to be altered because he did not want O'Brien to give Hernandez a Command Discipline for cursing. Respondent Alli testified that even though O'Brien had never before issued a Command Discipline for cursing, he (Respondent Alli) was afraid that Hernandez would get on O'Brien's bad side and be more likely to receive a Command Discipline at a later date. Respondent Alli did not think that Hernandez should get in trouble for his actions. Respondent Alli testified that he planned on showing the original tape to O'Brien when O'Brien was in a good mood.

Respondent Alli testified that he told Tavaréz in the July 2006 telephone interview that he thought he heard Harper and Haro discuss going to the Technical Assistance Response Unit to have the tape altered. According to Respondent Alli, he did not believe at that time that Harper and Haro were necessarily talking about a Department

tape. Respondent Alli reiterated that he spoke with a supervisor with whom Harper and Haro's conducted the integrity test, although in his interview Respondent Alli never told Tavaréz anything about discussing the matter with a supervisor. Instead, Respondent Alli told Tavaréz something to the effect of, "I didn't ask questions. I just walked around listening to the undercovers talking." He testified that he did not immediately confront Harper and Haro because he did not feel that he had anything on them. It also crossed his mind that if he confronted them, Harper and Haro might destroy evidence or he might become the victim of retaliation. In his Official Department Interview, Respondent Alli stated that he is Harper and Haro's supervisor. He clarified at trial that while he was indeed a supervisor in Group 52 (the group to which Harper and Haro were assigned), he was not their direct supervisor. He reiterated that Harper and Haro had administrative assignments, and he explained that he had nothing to do with the functions of the administrative staff.

On redirect examination, Respondent Alli testified that Respondent JeanJacques wrote the word "training" on the original version of the March 1, 2006 integrity test videotape. Respondent Alli stated that he never intended to permanently withhold the original tape from O'Brien. He explained, "My intention was once the case folder hits my desk, I would go in there with the original . . . make sure [O'Brien] is in a good mood, show him both [versions]." According to Respondent Alli, he shared his plan with Respondent JeanJacques. Respondent Alli stated that he had an open desk and would have destroyed the tape had he intended to permanently withhold it from O'Brien. He testified that in July 2006, he was the direct supervisor team leader of Group 52's Team B, a team to which Harper and Haro were not assigned.

FINDINGS AND ANALYSIS

Disciplinary Case Nos. 82437/06 & 82431/06

Disciplinary Case No. 82432/06 – Specification No. 1

The Respondents stand charged with engaging in conduct prejudicial to the good order, efficiency, and discipline of the Department in that they tampered with evidence. Specifically, the Respondents stand charged with altering a copy of an integrity test videotape for the purpose of removing Hernandez's inappropriate language from the videotape. It went undisputed at trial that after heading the integrity test videotape on March 1, 2006, Hernandez mistakenly recorded himself cursing as he set up the camera. The cursing was out of frustration, was not directed at anyone in particular, and was not overheard by members of the public. Approximately ten minutes after the cursing, the actual integrity test commenced.

It also went undisputed at trial that after watching the integrity test videotape, Respondent Alli asked his field team if Hernandez's profanity could be removed from the tape. Respondent JeanJacques proceeded to bring the tape to Respondent Santiago, who was responsible for maintaining the group's technical equipment, and asked him to delete the inappropriate language. Respondent Santiago produced an edited, duplicate copy of the tape that did not include Hernandez's cursing. It was this altered version that became part of the case folder for the March 1, 2006 integrity test.

It is imperative to note that only the footage of Hernandez's cursing was removed from the tape. The footage of the actual integrity test was not altered in any way, and it has not been alleged that the Respondents ever intended for that portion of the tape to be altered. Nevertheless, the Respondents' conduct was prejudicial to the good order,

efficiency, and discipline of the Department. Even though the footage of the integrity test remained intact, the Respondents' conduct tainted the tape by casting doubt on its veracity. The very fact that the Respondents were willing to take matters into their own hands and remove Hernandez's cursing from the tape naturally leads one to wonder whether the Respondents might have been willing to edit the tape in other, more relevant sections.

Respondent Alli explained that his decision to alter the March 1, 2006 integrity test tape was based on, among other things, the fact that the test target passed, the integrity test was merely procedural and not criminal in nature, Hernandez's profanity was not directed at anyone, and Hernandez's mistake was minor. At the end of the day, however, the decision of whether or not to alter evidence cannot be determined on a case by case basis. Altering the tape after it was headed was in and of itself inappropriate. It is irrelevant that Hernandez's cursing was only minor misconduct and that the cursing took place before the integrity test even started. Because the Respondents altered the tape, the tape would not stand up to scrutiny in court. Moreover (and even more damaging), by altering the tape, the Respondents tainted their reputations. Through their actions in March 2006, the Respondents have undermined their credibility and cast doubt on the integrity of any evidence for which they become responsible.

Based on the foregoing, Respondent Santiago and Respondent JeanJacques are found Guilty as charged, and Respondent Alli is found Guilty of Specification No. 1.

Disciplinary Case No. 82432/06

Specification No. 2

Respondent Alli stands charged with engaging in conduct prejudicial to the good order, efficiency, and discipline of the Department in that he withheld the original integrity test videotape from his Commanding Officer and presented him with an altered version for the purpose of preventing his Commanding Officer from discovering that Hernandez used inappropriate language.

According to Respondent Alli, when he heard Hernandez's profanity on the tape, he wondered how O'Brien would react. He testified that he wanted the tape altered because he did not want Hernandez to get into trouble with O'Brien. Respondent Alli asked Respondent JeanJacques to return the original tape to him for training purposes. He ended up keeping the original version of the tape in his desk and giving Molina the altered version to be included in the case folder.

Although Respondent Alli testified that he intended to show the original version of the tape to O'Brien at a later date, both his testimony and March 2006 actions indicate that he had no immediate intention of bringing the tape to O'Brien's attention. Moreover, it is clear that the sole purpose for altering the integrity test video in the first place was to prevent O'Brien from learning of Hernandez's profanity.

Based on the foregoing, Respondent Alli is found Guilty of Specification No. 2.

Disciplinary Case No. 82432/06

Specification Nos. 3 & 4

Respondent Alli who stands charged with, having become aware of another allegation of tampering with an integrity test tape and failing to notify his Commanding Officer and/or the IAB Command Center. Respondent Alli testified that on or about July 13, 2006, he overheard bits and snippets of a conversation between Harper and Haro in which it sounded like they were planning to alter a tape. He believed at the time that they were talking about a personal video. While Respondent Alli testified at trial that on July 17 or 18 he spoke with one of Harper and Haro's supervisors about an integrity test that they had conducted, he stated in his Official Department Interview that he gathered some more information about the situation from listening to undercovers. At the end of the day, however, it is irrelevant whether Respondent Alli obtained information from speaking to a supervisor or listening to undercovers. In either scenario, Respondent Alli spent a few days putting the pieces of the case together in his mind and proceeded to report his allegation to his Commanding Officer as soon as he believed Harper and Haro might actually be involved in misconduct. Just five days after he overheard Harper and Haro's conversation, Respondent Alli notified his Commanding Officer of the possible misconduct and was interviewed by IAB about the allegation.

Respondent Alli also stands charged with failing to supervise Harper and Haro. Respondent Alli was a lieutenant in IAB Group 52, and Harper and Haro were lower-ranking members assigned to the same group. While Respondent Alli supervised a Group 52 field team, however, Harper and Haro had administrative assignments.

Respondent Alli explained that he was not Harper and Haro's direct supervisor, and he had nothing to do with the functions of Group 52's administrative staff.

In the end, Respondent Alli's allegation against Harper and Haro was substantiated, and Department charges were brought against them for attempting to alter an audiotape used in an integrity test. Harper and Haro ultimately pleaded guilty. McGovern testified that without Respondent Alli's assistance, the Department would have never found out about Harper and Haro's misconduct.

Accordingly, Respondent Alli is found Not Guilty of Specification Nos. 3 and 4.

PENALTY

Respondent Santiago and Respondent JeanJacques have been found Guilty of engaging in conduct prejudicial to the good order, efficiency, and discipline of the Department in that they altered a copy of an integrity test videotape for the purpose of removing Hernandez's inappropriate language from the videotape. By altering the tape, Respondent Santiago and Respondent JeanJacques tainted evidence and undermined their credibility. It is important to note, however, that they did not alter the footage of the actual integrity test in any way, and it has not been alleged that the Respondents ever intended for that portion of the tape to be altered. For this reason, the Assistant Department Advocate's suggested penalty of 15 vacation days seems appropriate. Had the integrity test itself been the altered portion, a much more severe penalty would be in order.

Respondent Alli has not only been found Guilty of the same misconduct as his co-Respondents, but he has also been found Guilty of withholding the original integrity test

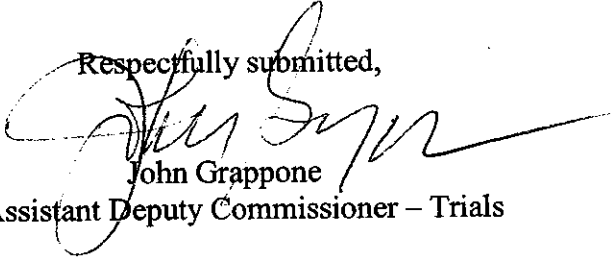
DETECTIVE JOSE SANTIAGO
DETECTIVE VOLNY JEANJACQUES
LIEUTENANT AHMAD ALLI

24

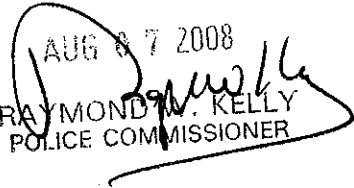
videotape from his Commanding Officer and presenting him with an altered version for the purpose of preventing his Commanding Officer from discovering that Hernandez used inappropriate language. For this second act of misconduct, I recommend that he forfeit an additional five vacation days.

Accordingly, I recommend that Respondent Santiago and Respondent JeanJacques each forfeit 15 vacation days and that Respondent Alli forfeit 20 vacation days.

Respectfully submitted,


John Grappone
Assistant Deputy Commissioner – Trials

APPROVED


AUG 8 7 2008
RAYMOND W. KELLY
POLICE COMMISSIONER